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5
6 ATTORNEYS FOR PLAINTIFF
MARKHAM ROBINSON

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

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11 MARKHAM ROBINSON, in his capacity as
12 Presidential Elector and Chairperson-Elect of
the American Independent Party,

13 Plaintiff,

14 v.
15 SECRETARY OF STATE DEBRA
16 BOWEN, in her individual and official
capacities, THE REPUBLICAN NATIONAL
17 COMMITTEE, an organization, form
unknown, THE REPUBLICAN PARTY OF
18 CALIFORNIA, an organization, form
unknown, SENATOR JOHN McCAIN, in his
individual and official capacities, DOES
19 ONE through FIFTY FIVE, inclusive.

20 Defendants.

21 Case No. _____
22

23 **PLAINTIFFS' COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

24 Plaintiff alleges as follows:

25 **PARTIES**

26 1. Plaintiff MARKHAM ROBINSON (Mr. Robinson) is a natural person residing and
27 domiciled in the State of California, in the County of Solano. Mr. Robinson is also Chairperson-
Elect of the American Independent Party (AIP) and a certified AIP Presidential Elector on file
with the California Secretary of State (See Cal. Elections Code 7578). Mr. Robinson is also a
registered voter in the United States and in the State of California, and a federal and state taxpayer.

1 2. The AIP is a political party organized and operating in the State of California,
 2 recognized as a political party and by California law (see Cal. Elections Code §§ 6500 *et seq.*, 7500
 3 *et seq.*) and recognized as a “qualified” political party by the California Secretary of State. (See,
 4 California Secretary of State’s website at http://www.sos.ca.gov/elections/elections_f.htm.)

5 3. Defendant SECRETARY OF STATE DEBRA BOWEN (Secretary Bowen) is the
 6 Secretary of State of California. She is named in her individual and official capacities.

7 4. Defendant REPUBLICAN NATIONAL COMMITTEE (RNC) is an organization,
 8 form unknown. On information and belief, the RNC maintains offices and operates throughout
 9 the State of California.

10 5. Defendant CALIFORNIA REPUBLICAN PARTY (CRP) is an organization, form
 11 unknown. On information and belief, the RNC maintains offices and operates throughout the
 12 State of California.

13 6. Defendant SENATOR JOHN McCAIN (Senator McCain) is a natural person
 14 residing and domiciled in the State of Arizona. Senator McCain has obtained the support of the
 15 majority of Republican Delegates to the Republican National Convention, and is therefore the
 16 presumptive nominee of the Republican Party for President of the United States. Senator McCain
 17 is subject to personal jurisdiction because he is aggressively campaigning throughout the State of
 18 California and across the United States, and is actively soliciting California popular votes in
 19 anticipation of the general election, in which he will be on the California ballot that is the subject
 20 of this action. Senator McCain is named in his individual and official capacities.

21 7. Defendants DOES ONE through FIFTY-FIVE, inclusive, are the California
 22 presidential electors of the Republican Party. Pursuant to law, the identities of DOES ONE
 23 through FIFTY-FIVE will be on file with the California Secretary of State on or before October 1,
 24 2008. Plaintiffs are presently unaware of the identities of the California presidential electors, and
 25 therefore refer to them with fictitious names. Does ONE through FIFTY-FIVE, inclusive, are
 26 therefore named in their individual and official capacities.

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JURISDICTION AND VENUE

2 8. Subject-matter jurisdiction is proper under 28 U.S.C. § 1331 because this case
3 involves questions of federal law. Further, there is supplementary jurisdiction over all state-law
4 claims under 28 U.S.C. § 1337 because they arise out of a common set of facts with issues of
5 federal law. Venue is proper under 28 U.S.C. § 1331(b)(2) because a substantial part of the events
6 or omissions giving rise to the claim have occurred, and are occurring, in the Northern District of
7 California.

GENERAL ALLEGATIONS

9 9. In November 2008, the United States will hold its presidential election. Through
10 this process, each of the several states has a certain number of electoral votes, and each of the
11 several states is free to choose how to cast those electoral votes.

12 10. The State of California has fifty-five electoral votes. The process in the State of
13 California by which these electoral votes are cast is as follows:

- a. The several political parties eligible to be on the ballot, including the AIP, file their list of electors with the California Secretary of State. (Cal. Elections Code §§ 7100, *et seq.*)
 - b. The Secretary of State places on the ballot each of the parties and their nominated candidate. (Cal. Elections Code § 6901.)
 - c. The general election is held.
 - d. Following the general election, the electors of the party and candidate with the most popular votes, in turn, cast their votes for president. (Cal. Elections Code §§ 6906, *et seq.*)

23 11. As reflected on the California Secretary of States website, both the Republican
24 Party and the AIP are “qualified” parties eligible to appear – with their nominated candidates – on
25 the California ballot in the upcoming presidential election. (See, Secretary of State’s website at
26 http://www.sos.ca.gov/elections/elections_f.htm)

27 12. The AIP has filed its list of electors with the California Secretary of State, which
28 includes plaintiff.

1 13. The AIP has nominated Alan Keyes for President of the United States.

2 14. Senator McCain has received the support of the majority of delegates to the
3 Republican National Convention. On information and belief, in accordance with applicable
4 Republican primary rules, the Republican Party will formally nominate Senator McCain for
5 President of the United States during the Republican National Convention, which is scheduled for
6 September 1 through September 4, 2008.

7 15. On information and belief, if the Republican Party and its candidate, Senator
8 McCain, receive the most popular votes in California and its fifty-five electors are entitled to cast
9 their votes for the president in accordance with the procedure identified in fact 10(d) above, the
10 fifty-five Republican electors (named herein as Does one through fifty) will each cast their vote
11 for the Republican candidate, Senator McCain.¹ If Senator McCain receives more electoral votes
12 than any other candidate, then he will become the next President of the United States. (U.S.
13 Const., Art. II.)

14 16. As a voter, plaintiff Robinson will cast his vote for Alan Keyes during the general
15 election. If applicable, as a presidential elector, Mr. Robinson will also cast his electoral vote for
16 Alan Keyes.

17 17. On information and belief, Senator McCain was born in the Commonwealth of
18 Panama in 1936, and is therefore not eligible to be President of the United States under Article II
19 of the U.S. Constitution's "natural-born" citizen requirement.

20 18. As a Presidential Elector and Chairperson-Elect of a competing party on the ballot,
21 plaintiff has a personal and distinct interest in the 2008 presidential election sufficient to establish
22 his standing to challenge the legitimacy of rival campaigns.

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26 ¹ By way of background, it is extraordinary for an elector to case his or her vote for a hostile party.
27 So called "faithless electors" have cast only nine of the 21,291 electoral votes recorded since
28 1796. No elector has defected since 1988, and two defections never have occurred in a single
election.

FIRST CAUSE OF ACTION

AGAINST SECRETARY BOWEN

**INJUNCTIVE RELIEF PRECLUDING SECRETARY BOWEN FROM
PLACING SENATOR McCAIN'S NAME ON THE CALIFORNIA
BALLOT FOR THE NOVEMBER 2008 PRESIDENTIAL ELECTION.**

U.S. Const., Art. II

19. Plaintiff realleges all above allegations.

20. Senator McCain is ineligible to be President of the United States under Article II of the United States Constitution because he is not a "natural-born citizen."

9 21. Because Senator McCain will be the Republican nominee for President, Secretary
10 Bowen is required by State law to place Senator McCain on the ballot as a presidential candidate.
11 (Cal. Elections Code § 6901.)

22. Therefore, an actual controversy now exists between plaintiffs and Secretary Bowen, regarding Senator McCain's eligibility to be on the California ballot. The controversy is ripe for review and will, until resolved, damage plaintiffs.

15 23. AIP and its electors, including plaintiff Robinson, will be irreparably harmed by
16 Senator McCain's illegal and illegitimate presence on the ballot because they are competing on the
17 same ballot. The harm sustained by being forced to compete against – and potentially be defeated
18 by – an illegal and illegitimate campaign cannot be monetarily remedied, nor can it be remedied
19 after the November general election in any manner.

20 24. This Court therefore should use its inherent equitable power to enforce the
21 Constitution and enjoin the Secretary from following California law and placing Senator
22 McCain's name on the official California Ballot.

SECOND CAUSE OF ACTION

INJUNCTIVE RELIEF PREVENTING THE REPUBLICAN NATIONAL COMMITTEE, CALIFORNIA REPUBLICAN PARTY, AND SENATOR McCAIN FROM NOMINATING SENATOR McCAIN FOR PRESIDENT.

U.S. Const., Art. II

25. Plaintiff realleges all above allegations.

1 26. Defendants RNC, CRP and Senator McCain are each bound by Article II of the
2 United States Constitution because they have each accepted public funds in connection with this
3 election, and because Article II is inherently binding on presidential candidates and nominations.

4 27. Senator McCain is ineligible to be President of the United States under Article II of
5 the United States Constitution because he is not a “natural-born” citizen.

6 || 28. Senator McCain is running for president.

7 29. Defendants RNC and CRP are in the process of nominating Senator McCain for
8 President, and Senator McCain's presidential nomination is set to be formalized during the
9 Republican National Convention of September 1-4, 2008.

10 30. Therefore, an actual controversy now exists between plaintiff and defendants,
11 RNC, CRP and McCain, regarding the ability of Senator McCain to be on the California ballot,
12 and run for, and serve as, President of the United States. The controversy is ripe for review and
13 will, until resolved, damage plaintiffs.

14 31. AIP and its electors, including plaintiff Robinson, will be irreparably harmed by
15 Senator McCain's illegal and illegitimate presence on the ballot because they are competing on the
16 same ballot. The harm sustained by being forced to compete against – and potentially be defeated
17 by – an illegal and illegitimate campaign cannot be monetarily remedied, nor can it be remedied
18 after the November general election in any manner.

19 32. This Court therefore should use its inherent equitable power to enforce the
20 Constitution and enjoin the RNC and the CRP from nominating Senator McCain for President of
21 the United States, and further enjoin Senator McCain from running for President of the United
22 States.

THIRD CAUSE OF ACTION

INJUNCTIVE RELIEF PREVENTING THE REPUBLICAN NATIONAL COMMITTEE, CALIFORNIA REPUBLICAN PARTY, AND SENATOR McCAIN FROM NOMINATING SENATOR McCAIN FOR PRESIDENT.

Cal. Bus. & Prof. Code § 17200

27 | 33. Plaintiff realleges all above allegations.

28 || 34. Senator McCain is running for president.

1 35. Defendants RNC and CRP are in the process of nominating Senator McCain for
 2 President.

3 36. The Republicans, including the Republican National Committee, the California
 4 Republican Party, and their Candidate, Senator McCain, are an “organization” for purposes of
 5 California Business and Professions Code section 17200 *et seq.*

6 37. Defendants RNC, CRP and Senator McCain are each engaging in “unfair
 7 competition” for purposes of section 17200, *et seq.*, because their nomination, candidacy and
 8 campaign for President violates Article II of the U.S. Constitution.

9 38. An actual controversy now exists between plaintiff and defendants McCain, RNC
 10 and CRP, regarding the ability of Senator McCain to be on the California ballot, and run for, and
 11 serve as, President of the United States. The controversy is ripe for review and will, until
 12 resolved, damage plaintiffs.

13 39. AIP and its electors, including plaintiff Robinson, will be irreparably harmed by
 14 Senator McCain’s illegal and illegitimate presence on the ballot because they are competing on the
 15 same ballot. The harm sustained by being forced to compete against – and potentially be defeated
 16 by – an illegal and illegitimate campaign cannot be monetarily remedied, nor can it be remedied
 17 after the November general election in any manner.

18 40. This Court therefore should use its inherent equitable power to enforce the
 19 Constitution and enjoin the RNC and the CRP from nominating Senator McCain for President of
 20 the United States, and further enjoin Senator McCain from running for President of the United
 21 States.

22 **FOURTH CAUSE OF ACTION**

23 **INJUNCTIVE RELIEF AGAINST DOES ONE THROUGH FIFTY-FIVE, 24 INCLUSIVE FROM CASTING THEIR ELECTORAL VOTES FOR SENATOR McCAIN.**

25 **U.S. Const., Art. II**

26 41. Plaintiff realleges all above allegations.

27 42. The Republican’s presidential electors are bound by Article II of the United States
 28 Constitution because the Republican Party has accepted public funds in connection with this

1 election, and votes cast by presidential electors are inherently subject to the requirements of
2 Article II.

3 43. On information and belief, the overwhelming majority, if not all, of the fifty-five
4 Republican electors of California will vote for the Republican presidential candidate, Senator
5 McCain, if the Republicans win California's electoral votes in the November election.

6 44. Senator McCain is ineligible to be president under Article II of the U.S.
7 Constitution because he is not a “natural born” citizen as defined there.

8 45. Therefore, an actual controversy now exists between plaintiffs and defendants
9 McCain, RNC and CRP, regarding the ability of Senator McCain to be on the California ballot,
10 and run for, and serve as, President of the United States. The controversy is ripe for review and
11 will, until resolved, damage plaintiffs.

12 46. AIP and its electors, including plaintiff Robinson, will be irreparably harmed by
13 Senator McCain's illegal and illegitimate presence on the ballot because they are competing on the
14 same ballot. The harm sustained by being forced to compete against – and potentially be defeated
15 by – an illegal and illegitimate campaign cannot be monetarily remedied, nor can it be remedied
16 after the November general election in any manner.

17 47. This Court therefore should use its inherent equitable power to enforce the
18 Constitution and enjoin the California Republican Presidential electors from casting their votes for
19 Senator McCain.

FIFTH CAUSE OF ACTION

**INJUNCTIVE RELIEF AGAINST DOES ONE THROUGH FIFTY-FIVE,
INCLUSIVE FROM CASTING THEIR ELECTORAL VOTES FOR
SENATOR McCAIN.**

Cal. Bus. & Prof. Code § 17200

24 | 48. Plaintiff realleges all above allegations.

25 49. The overwhelming majority, if not all, of the California Republican presidential
26 electors intent to vote for Senator McCain for President.

27 50. The Republican party, including its electors, are an “organization” for purposes of
28 California Business and Professions Code section 17200 *et seq.*

1 51. The Republicans and their electors are engaging in “unfair competition” for
 2 purposes of section 17200, *et seq.*, because their efforts to elect Senator McCain as President
 3 violates Article II of the U.S. Constitution.

4 52. An actual controversy now exists between plaintiffs and defendants McCain, RNC
 5 and CRP, regarding Senator McCain’s eligibility to run for, and serve as, President. The
 6 controversy is ripe for review and will, until resolved, damage plaintiffs.

7 53. On information and belief, the overwhelming majority, if not all, of the fifty-five
 8 Republican electors of California will vote for the Republican presidential candidate, Senator
 9 McCain, if the Republicans win California’s electoral votes in the November election.

10 54. Senator McCain is ineligible to be president under Article II of the U.S.
 11 Constitution because he is not a “natural born” citizen as defined there.

12 55. Therefore, an actual controversy now exists between plaintiffs and defendants
 13 McCain, RNC and CRP regarding the ability of Senator McCain to be on the California ballot, and
 14 run for, and serve as, President of the United States. The controversy is ripe for review and will,
 15 until resolved, damage plaintiffs.

16 56. AIP and its electors, including plaintiff Robinson, will be irreparably harmed by
 17 Senator McCain’s illegal and illegitimate presence on the ballot because they are competing on the
 18 same ballot. The harm sustained by being forced to compete against – and potentially be defeated
 19 by – an illegal and illegitimate campaign cannot be monetarily remedied, nor can it be remedied
 20 after the November general election in any manner.

21 57. This Court therefore should use its inherent equitable power to enforce the
 22 Constitution and enjoin the California Republican Presidential electors from casting their votes for
 23 Senator McCain.

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1 **SIXTH CAUSE OF ACTION**

2 **AGAINST ALL DEFENDANTS**

3 **DECLARATORY JUDGMENT THAT SENATOR McCAIN IS INELIGIBLE TO BE**
 PRESIDENT UNDER ARTICLE II OF THE U.S. CONSTITUTION.

4 58. Plaintiffs reallege all above allegations.

5 59. As set forth above, there exists an actual controversy between plaintiffs and
 6 defendants RNC, CRP, Senator McCain, and the California Republican presidential electors (Does
 7 one through fifty-five) regarding the ability of Senator McCain to be on the California ballot, and
 8 be run for, and serve as, President of the United States.

9 60. To the extent defendants RNC, CRP, Senator McCain and the California
 10 Republican electors (Does One through Fifty Five) are not subject to the limitations of Article II
 11 of the U.S. Constitution, this Court should issue a declaratory judgment that Senator McCain is
 12 ineligible to be president under Article II, and therefore the respective nomination, campaigns and
 13 electoral votes of these defendants are ineffective because Senator McCain cannot serve as
 14 president.

15 **PRAYER**

16 WHEREFORE, plaintiffs pray for judgment as follows:

- 17 1. For a permanent injunction prohibiting Secretary Bowen from placing Senator
 McCain's name on the California ballot as a candidate for president;
- 18 2. For a permanent injunction prohibiting the RNC and the CRP from nominating
 Senator McCain for President of the United States, prohibiting Senator McCain
 from running for President of the United States, and prohibiting the RNC, CRP and
 Senator McCain from attempting to place Senator McCain's name on the California
 ballot for the upcoming 2008 presidential election;
- 19 3. For a permanent injunction prohibiting the California Republican Presidential
 electors from casting their votes for Senator McCain;
- 20 4. For a declaratory judgment that Senator McCain is ineligible to serve as President
 of the United States under Article II of the U.S. Constitution;

- 1 5. For costs of suit;
2 6. For attorneys' fees as provided for by law; and
3 7. All other relief the Court deems just and proper.

4 Dated: August 11, 2008

WALSTON CROSS

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6 By: Gregory S. Walston

7 ATTORNEYS FOR PLAINTIFF

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